

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

GERALD LEE BRUCE,

Plaintiff,

v.

CIVIL ACTION NO. 5:07-CV-76
(Judge Stamp)

CITY OF WHEELING; CHIEF KEVIN M.
GESSLER individually and in his capacity as
Chief of City of Wheeling Police Department;
OFFICER SCOTT BARGER, OFFICER GUS
KEPREOS and OFFICER MELITE, individually
and in their capacity as officers of the City of
Wheeling Police Department,

Defendants.

**MEMORANDUM, OPINION, and ORDER DENYING DEFENDANTS' MOTION TO
UNSEAL JUVENILE RECORDS**

On April 14, 2009, came the above named Plaintiff, by Peter M. Suwak, via
telephone, and the above named Defendants, by Michelle Dougherty, for Defendants' Motion to
Unseal Juvenile Records. Testimony was not taken, and no other evidence was introduced.

I. Introduction

A. Background.

Plaintiff filed his Complaint in the United States District Court for the Northern District
of West Virginia on June, 2007.¹ Plaintiff alleged civil rights violations, assault and battery and
intentional infliction of emotional distress resulting from an altercation between himself, several
other juveniles and members of the Wheeling Police Department. Defendants filed the Motion

¹ Doc. No. 1

to Unseal Juvenile Records on March 17, 2009.² This Court set an evidentiary hearing and argument for April 14, 2009.

B. The Motion.

Defendants' First Motion to Unseal Juvenile Records.

C. Decision.

Defendants' Motion to Unseal Juvenile Records is **DENIED** in the absence of express authority to this Court to do so.

II. Defendants' Motion to Unseal Juvenile Records

A. Contentions of the Parties

Defendants contend that this Court has authority to unseal the juvenile records at issue pursuant to WV Code §§ 49-5-17(c)(5); 49-5-17(c)(7) 49-5-18(d).

Plaintiff did not respond to the motion.

B. Discussion

This Court lacks the express authority to unseal the juvenile records at issue in this case. The relevant portions of the West Virginia Code state as follows:

WV Code § 49-5-17(c)(5) states: "Upon written petition and pursuant to a written order, the *circuit court* may permit disclosure of juvenile records..." (*emphasis added*).

WV Code § 49-5-17(c)(7) states: "...juvenile records shall be disclosed, or copies made available, in response to any *lawfully issued subpoena (emphasis added)* from a federal court or federal agency." Defendants may obtain a subpoena from the Clerk.

WV Code § 49-5-18(d) states: "Sealed records may not be opened except upon order of

² Doc. No. 31

the *circuit court.*” (*emphasis added*).

None of the foregoing code sections grant this Court the authority to grant Defendants’ motion.

C. Decision

In the absence of express authority to unseal the juvenile records, Defendants’ Motion to Unseal Juvenile Records is hereby **DENIED**.

Any party who appears pro se and any counsel of record, as applicable, may, within ten (10) days from the date of this Order, file with the Clerk of the Court the written objections identifying the portions of the Order to which objection is made, and the basis for such objection. Failure to timely file objections to the Order set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Order.

The Clerk of the Court is directed to provide a copy of this Order to parties who appear pro se and all counsel of record, as applicable, as provided in the Administrative Procedures for Electronic Case Filing in the United States District Court for the Northern District of West Virginia.

DATED: April 15, 2009

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE